UNDER AUSPICES OF THE

FEDERAL MEDIATION AND CONCILIATION SERVICE

WASHOE COUNTY SCHOOL POLICE OFFICERS ASSOCIATION, (Officer DiMarzo)

And **FMCS Case No. 010613-12005-A**

WASHOE COUNTY SCHOOL DISTRICT
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D E C I S I O N

Appearances:

MAY PROSSER-STRONG and
CHARLIE STRONG, Employee Representation
Services, Inc., Sacramento, CA, for the
Association.

JEFFREY S. BLANCK, General Counsel,
Reno, NV, for The District.

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DAVID G. HEILBRUN, Arbitrator: As an introductory overview, this Decision concerns a grievance filed against the Washoe County School District ("District") by one of its employees. The District is a county-wide school system headquartered in Reno, Nevada. It employs about 6,000 persons as teachers, aides, blue collar, office, administrative, and other employees, including a protective arm named Washoe County School Police Officers Department. ("Department"). The Department consists of approximately 30 individuals, including two Sergeants and a Chief of Police. The approximately 27 Officers of this Department constitute a separate collective bargaining unit, and are represented by the Washoe County School Police Officers Association ("WCSPOA" or "Association"). A collective bargaining agreement ("CBA"), effective (as modified by Memorandum of Understanding) had existed from July 1, 1998 until June 30, 2003 between WCSPOA and the District.

CASE CHRONOLOGY

On June 7, 2000 a conversation ensued at the District's Galena High School between Principal Ross Gregory and Department Officer Armour ("Deke") DiMarzo. The conversation was characterized by DiMarzo as concerning a misdemeanor situation. He promptly reported the gist of the episode to higher command, but otherwise decided to let the matter rest.

On December 22, 2000 a chance meeting of Gregory and DiMarzo occurred in a Reno department store. Gregory took the occasion to ask that the two of them meet soon in regard to the incident (of 6/7/00). After a subsequent telephone call from Gregory, and still another face-to-face conversation as to scheduling, an agreement was reached that the two would meet at Galena High School on February 7, 2001.

As the meeting date approached DiMarzo reached plans with Sergeant Randy Harris that they would both be present with Gregory. However on the day before this was to occur, DiMarzo learned from Harris that another commitment would prevent Harris from attending as he had planned to do. Upon learning this, DiMarzo said it was alright because he would then simply secretly turn on his tape recorder to capture Gregory's remarks as uttered. Harris objected to this being done, and after some conversation on the point directly ordered DiMarzo not to make this form of taping in the next day's meeting. DiMarzo said he would comply, but would grieve the unsupportable order of a superior.

On February 8, 2001 DiMarzo initiated a classified employee grievance about Harris having ordered his forbearance from taping covertly. In the body of this grievance, DiMarzo wrote that Nevada law permitted a recording of the type he intended to make, and that Harris' order appeared to conflict with the CBA regarding (1) its Preamble (Article 2), (2) the Non-Discrimination language (Article 5), and, insofar as Nevada labor law is concerned, the Terms of Agreement (Article 23).

DiMarzo's grievance was successively denied on February 22nd and May 1st by Chief of Police Tamara Evans and the District Superintendent, Dr. James Hager, respectively. The. operative words of Evans' denial stated: "The grievance is denied. Sergeant Harris issued a lawful order, which Officer DiMarzo was obligated to follow. No disciplinary action resulted from this order. There has been no violation of the cited Articles or Statutes." The operative words of Hager's denial stated, in part: "Overt taping is not prohibited and may be allowed, and I defer to the discretion of the Chief of Police to determine on a case-by-case basis when such taping is appropriate and may be of benefit to the parties involved." A Request for Arbitration was made on June 7, 2001, and hearing of the matter took place at the District's Reno Office on March 25, 2002.

SEQUENCE OF WITNESSES

Ronald Phillip Dreher was the Association's first witness. He is self employed under an assumed business name Advocacy and Private Investigation Services. Dreher's principal career background was 26 years as a police officer with the City of Reno Police Department. He served several terms as President of the Reno Police Protective Association, and variously held other offices with the organization. At the time of testifying he was President of the Police Officers Research Association of Nevada ("PORAN"), and performs both volunteer service and paid lobbyist work for that organization.

Dreher testified to familiarity with Nevada collective bargaining legislation, and with employment practices and policies in numerous law enforcement agencies throughout the state. He recalled that once the City of Reno sought to institute a unilateral change by putting on a policy saying that covert tape-recording would not be allowed. The proposed policy was ultimately withdrawn by the City. In regard to NRS 200.650, Dreher termed his understanding of that law as being a "single party consensus" subject matter. He added that while surreptitious recording would thus be permissible under that law, it would not, in his view, amount to a form of "surveillance", given a fair meaning of that word.

Deke DiMarzo testified extensively in support of the WCSPOA grievance. His background covers employment with several law enforcement agencies, including the Reno Police Department. He has been employed as a Police Officer by the District since March 1998. During this employment he was Association President for a time span ending in early 2001.

DiMarzo characterized his intended taping of Gregory as a permissible activity under Nevada's "one-party consent" law. He viewed the context of his employment while on school sites as potentially involving contact with the several thousand employees of the District, including administrators and teachers, as well as students, parents or even visitors. Within this context DiMarzo believed that covert taping was often vital to protect himself from potential vulnerability as to others making accusations of misconduct against him. He believed the covert activity to be of utmost importance in avoiding any vulnerability to "civil liability, being sued, termination [or even] criminal prosecution."

DiMarzo elaborated on his early February 2001 conversation with Harris, for which he had two chief motivations going in; (1) protection for himself, and (2) obtaining any possibly "incriminating statements" that Gregory himself might utter. He advised Harris of his feeling of vulnerability, and a concern that Gregory might "accuse me during the meeting." In the sequence of events, Harris then contacted Gregory for discussion, and advised DiMarzo that he had done so. It was that configuration of events that satisfied DiMarzo he could

safely go into the meeting that Gregory had so incessantly sought to have, with the expectation that Harris would accompany him to vouch for anything said.

When Harris turned up with last-minute unavailability to attend, then, for the first time, DiMarzo explained to Harris how it would be alright because he had "plan[ned] on recording it anyway." Harris then said he believed this particular Principal would disapprove of that, causing DiMarzo to announce plainly that the Principal would not be aware he is being tape-recorded. At that point Harris imposed his order that the covert taping not be done.

DiMarzo testified that the order came as quite a surprise to him, because officers of the Department had been allowed to make such covert recordings in the past. He advised Harris that the order was clearly against past practice, and would probably result in a grievance on the point. DiMarzo also ascertained that Harris did not consider it mandatory that he attend the scheduled meeting with Gregory, and on this basis it simply never occurred.

Donald George Miller had been employed by he District for over six years, and when testifying was the Association's President. During his employment he had covertly taped encounters with District staff and his own superiors within the Department. Such recordings took place on school grounds and even the District's administrative office, however Miller was never admonished for doing so or counseled about the activity.

While in this employment Miller engaged in two assigned instances of surveillance. The process in both instances involved strategic placing of a pinhole camera, but not himself remaining to observe any suspected activity. He was also subjected to an instance of internal affairs investigation because of misconduct complaint filed against him. When clarifying and true facts concerning this complaint surfaced he was exonerated. However this and other experiences in the profession left Miller with a belief that covert taping was a safety net for police officers, and allowed evidence to be obtained instantly which would not otherwise be possible.

Miller also described a prominent past incident in which a former Department Police Chief called a special meeting of all officers. In remarks made to the assembled officers this former chief made derogatory comment about the District and intimated that a Department-wide version of relevant events should be adopted by all officers of the Department. Unbeknownst to the former chief, one of the officers present was making a tape recording of such remarks. This was turned over to District officials, and led to the former chief's termination because of what he had said

As to this incident, and covert taping in general, Miller believes the NRS 200.850 "one person's approval" statute implicitly permits such surreptitious recording.

He could recall at least once notifying former Chief Lyman about a covert taping, but he has not informed successor Police Chief Evans of his so engaging.

May Prosser-Strong testified formally in support of the instant grievance. She described a background of 26 years in labor relations/collective bargaining, extensive negotiating experience, plus instances of being a trainer of others. Her past employment included a stint with Peace Officers Research Association of California (PORAC), and she is versed in filing unfair labor practice charges with Nevada's Employee Management Relations Board (EMRB).

Her testimony introduced the issue of proposed change by the District to its Policies Manual on the subject of "COVERT RECORDINGS" (Section 06.10.8). After receiving a copy of proposed changes originating with Chief Evans, Prosser-Strong corresponded to Laura Dancer, the District's Assistant Superintendent – Human Resources, by letter dated February 2, 2001.[1] Her letter read, in part

"After reviewing [proposed revisions], I find that there are a number of the policies which need to be discussed. Some simply for clarification, some for the purposes of complying with NRS 288, as they clearly fall within the scope of negotiations."

Prosser-Strong's letter identified Section 06.10.8 Covert Recordings as one of the Policy Manual sections of her particular concern. Her letter continued, in further part, as follows:

"A number of these sections impact NRS 289 [2] as well as NRS 288, others raise concerns over potential violations of individual rights provided under Nevada State Law and/or Constitution. None of these sections should be adopted or implemented until we have had an opportunity to meet and attempt to resolve all concerns through established procedures."

This letter closed by inviting Dancer to schedule a mutually convenient meeting date. A meeting of this nature soon occurred, estimated as roughly on or about February 10th. In that meeting there was insufficient time to reach the subject of "Covert Recordings", but before being able to take it up again the District implemented its revisions on or about February 14th. As implemented the "Covert Recordings" section read: "Employees will not covertly record conversations involving other School District employees, unless such recording is in furtherance of an official Washoe County School District Police Department investigation, and has previously been approved by the Chief of Police."

In regard to the meeting where the Association ran out of time in which to fully present its position on covert recording, the District had insisted at the outset that all discussions about revision of policy was merely for clarification and not to

[1] The transcript thrice inadvertently refers to the date of this letter as "February 22nd" (page and line146/12, 229/24 and 230/9). I correct these mistaken references in the transcript to February 2nd (2001).

[2] This statute is popularly known as the "Police Officers Bill of Rights."

be considered negotiations. When Prosser-Strong protested this limitation, the District insisted the Policy Manual 06.10.8, as revised, was squarely outside the scope of mandatory bargaining under pertinent Nevada law.

Randy Harris, the now-retired Sergeant, was the District's initial witness. He had been a member of the District's Police Department for 25 years. Harris recalled learning from DiMarzo that the purpose of the intended meeting with Gregory on February 7th was to clear up some misunderstandings about a previous incident between these two individuals. From this, and other awareness, Harris testified that he originally believed it was important for him to be in attendance at the meeting because of prior conflicts between Gregory and DiMarzo. Harris also generally otherwise corroborated DiMarzo about his intended personal presence, but eventual inability to attend. He also recalled DiMarzo's spoken intention to make a covert tape recording because of Harris being unable to attend at the last minute, and that he ordered it not be done.

Harris also testified that in his 25 years with the Department, he was unaware of any District policy regarding covert recordings. His reasons at the time for making a prohibition were; (1) he thought it was prohibited by his understanding of NRS 393.400, (2) he believed it would simply not be in the best interests of Officer DiMarzo for it to happen, and (3) he believed there would be a great deal of problems possibly generated between the school police department and the school district administrators had the meeting been tape-recorded covertly. These reasons, and Harris' accompanying motivation at the time, were essentially detailed in a written statement dated February 23rd, that he provided to Chief Evans as part of the District's response to the grievance.

Tamara Evans has been the District's Police Chief since December 2000, after 20 years law enforcement experience with both Reno and Sparks, Nevada police departments. She had learned of the proposed Gregory-DiMarzo meeting only about a day before its intended occurrence, when Harris informed her of sudden unavailability to be a participant. At the time, newly on her job but influenced by extensive past experience in law enforcement, Evans held to a personal position against covert recordings of any coworkers. Her experience and belief was that the activity was divisive and disruptive, and created distrust, hard feelings and difficulties among employees if utilized.

Evans asserted that the District had no established policy on covert taping as of February 6th (the date of Harris' order), however the evolving incident raised a concern with her and a realization that a prohibition was "definitely a policy that we would want to have." She did not participate directly with District officials in implementing the covert taping prohibition policy, however learned immediately that it was done which reinforced her desire to have such in effect. The subject of covert taping had been among a batch of policies that the District drafted and circulated for review and comment. Evans fixed the effective date of new policies as March 12th. However she denied being influenced by the new implementation,

and, relatedly, denied that her decision on DiMarzo's grievance was in any way based on the policies as drafted and implemented. Finally, Evans testified that based on advice from District counsel, she understood that the entire subject of covert taping was not a subject of mandatory bargaining.

CASE REFERENCES

The pertinent excerpts from Nevada statutes are as follows:

NRS 200.650 – **Unauthorized, surreptitious intrusion of privacy by listening device prohibited.** Except as otherwise provided . . . a person shall not intrude upon the privacy of other persons by surreptitiously listening to, monitoring or recording, or attempting to listen to, monitor or record, by means of any mechanical, electronic or other listening device, any private conversation engaged in by the other persons, or disclose the existence, content, substance, purport, effect or meaning of any conversation so listened to, monitored or recorded, unless authorized to do so by one of the persons engaging in the conversation. (Added to NRS 1989)

NRS 288.150 – **Negotiations by employer with recognized employee organization: Subjects of mandatory bargaining; matters reserved to employer without negotiation**. 1. Except as provided . . . every local government employer shall negotiate in good faith through one or more representatives of its own choosing concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization . . . .
3. Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include: . . . © (lower case "c" in parenthesis) (3) The quality and quantity of services to be offered to the public; and (4) The means and methods of offering those services. (Added to NRS 1989)

NRS 393.400 – **Surreptitious electronic surveillance; exceptions.**
1. Except as otherwise provided in subsection 2, it is unlawful for a person to engage in any kind of surreptitious electronic surveillance on any property of a public school without the knowledge of the person being observed.
2. Subsection 1 does not apply to any electronic surveillance: (a) Authorized by a court order issued to a public officer, based upon a showing of probable cause to believe that criminal activity is occurring on the property of the public school under surveillance; (b) By a law enforcement agency pursuant to a criminal investigation . . . . (Added to NRS 1993)

In regard to the CBA previously in effect between these parties, the following excerpts appear:

Article 2 – Preamble WHEREAS, the parties recognize that the Board of Trustees is charged by law with the duty and responsibility of operating a public school system; AND WHEREAS, wages, hours, and other terms and conditions of employment of school district police officers and investigators are matters of mutual concern to the Board of Trustees and the Association . . . . THEREFORE, it is the intent and purpose of this Agreement to assure sound and mutual beneficial economic and employment relations between the parties hereto; to attempt to provide an orderly and peaceful means of conducting negotiations and resolving any misunderstandings or grievances; and to set forth here in article form the agreements between the parties covering wages, hours, and other terms and conditions of employment as provided in Nevada Revised Statutes Chapter 288.

Article 5 – Non-Discrimination. The parties hereto agree not to discriminate against any employee on the basis of Association membership or non-membership and agree further that the provisions of this Article are applicable to all employees covered by this contract.

Article 23 – Term of Agreement. "This agreement shall be effective . . . and shall remain in effect until June 30th of 2001 . . . ."[3]

ISSUE AND CONTENTIONS

This case is extremely narrow on its core facts, however the testimony, exhibits and salient references are extensive. The grievance is, however, over a matter that resulted in no disciplinary action against DiMarzo. For this reason I believe the issue may be simply framed from the grievance itself as originally formulated. The last and summarizing paragraph of the grievance reads:

"I request that Sgt. Harris withdraw his order and that Police Department Supervision and Administration respect the fact that Police Officers are permitted by law to make tape recordings of meetings and hearings."

In this context the Association advances several contentions. As a threshold matter, WCSPOA contends that the District impermissibly revised policies by establishing the covert prohibition policy in February 2001. This is asserted to be in violation of the CBA's language and intent under the Preamble. Secondly, the Association contends that NRS 200.650 effectively settles the question by reason of its explicit "single person consent" language

On this point, WCSPOA relies on legislative history of a related bill, and on the absence of any repealing (or amending) language that has ever appeared in

[3] On August 16, 2000 the parties entered into a Memorandum of Understanding, from which the following language is excerpted: "In recognition of . . . [salary adjustments for future years and health insurance contribution}. . . .] Negotiations for 2002-03 will not include salaries, and will be limited to health insurance and one article chosen by each party. MOU effective through June 30, 2003.

the State with respect to NRS 200.650. WCSPOA also points to evidence of past practice within this district of police officers engaging in surreptitious taping without prohibition. Further, the Association contends that covert taping is a full term and condition of employment, both by intrinsic meaning and as "industry standard."

The Association contends finally that covert taping is very fundamentally a significant term and condition of employment, much like the police officer's safety vest or badge. In this regard the Association cites U. S. Supreme Court Justice Douglas for a potion of his opinion in the *Steelworkers Trilogy* cases.

The language relied upon states, in part: "the labor arbitrator's source of law is not confined to the express provision of the contract, as the industrial common law – the practices of the industry and the shop – is equally a part of the collective bargaining agreement although not expressed in it."[4] This profound principle, basic to all labor arbitration, is of universal application, but must nevertheless be interpreted in specific fact situations.

The District contends to the contrary in various regards, but principally that "NRS 393.400 controls all the activities that the Association is alleging the District violated." In this first regard, the District has its own view of legislative history respecting the eventual statute.

This view is to the effect that such legislative history did not limit "electronic surveillance" simply to visual means, and that it applied when the person being observed was without knowledge of that fact. The deliberate adding of the word "surreptitious" to the Nevada Senate Bill 447 is also pointed to as reinforcing this view of apparent legislative intent. Further, a useful legal definition of "surveillance" terms it ". . . [O]versight, superintendence, supervision."

The District contends further that no past practice existed within, or applying to, the Department. Here the factors necessary to establish an actual past practice are (1) that it is unequivocal, (2) that it is clearly enunciated and acted upon, and (3) that it is readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. The District draws these three factors, verbatim and as last expressed, from the arbitration case *Washoe County School Dist.*, 113 LA 1053 (Hoh, 1999).

Finally, the District contends that WCSPOA never gave notice of any desire to negotiate on the subject of covert taping; merely instead meeting and conferring on the matter. In making this contention the District notes it is NRS 288.150 that provides support for its view.

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[4] Language taken from one of the Trilogy cases, *Steelworkers v. Enterprise Wheel & Car Corp.,* cited 363 U.S. 593; 46 LRRM 2423 (1960).

DISCUSSION

Notwithstanding very narrow facts of the case, an extensive array of Nevada law and collective bargaining principles surround an analysis of how these references should be applied.

I deal first with the statutes, as to which the parties are in dispute with regard to their meaning and application. NRS 200.650 is the simplest to discuss. It is a plain statement of privacy protection, with the significant proviso that gives it notoriety as the "single person consent" law. On its face this would appear to permit DiMarzo to have made his intended secret recording of Gregory, were the two of them to have met on February 7th as initially planned.

But my view of the statute does not end the question. This case remains fundamentally a grievance arising out of language in the CBA of the parties, and any of their related employment practices that may be proven to apply. It is here, and for this reason, that I discount the impact of NRS 200.650 on the case, and hold it to be inapplicable to any ultimate decision on merits of the grievance.

I deal next with NRS 393.400, believing at the outset that no aspect of the furnished legislative history on the underlying Bill 447 shows this statute to be amendatory of NRS 200.650. The fact of its enactment 4 years subsequently does not, in itself, provide for such an interpretation, nor is their any indication that the Nevada legislature expressly connected passage of NRS 393.400 to the earlier law.

On the blunt question of how NRS 393.400 by its actual terms might apply to the case, I have a dispositive assessment. This is to the effect that the statute presumes a situation from which the fruits of any revelations by the "person being observed" come from human observation and not the electronic processes of any recording device. For this reason I am in disagreement with the District that NRS 393.400 is simply the only needed source of deciding the case.

What remains is consideration of NRS 288.150, and language of the CBA itself. The approach as to this statute is keyed first and foremost to the specific named factors reserved as a local government employer's release from required mandatory negotiation. These consist of the "quality and quantity" and "means and methods" language of statutory sections 3. © (3) and (4). Testimony as to these factors had an extensive range in the offering of examples. Bicycling on patrols, make of police vehicles, and possession of a weapon while on duty were among the instances advanced as possibly illustrative of "services." And it should be remembered that such "services" are, by implication, those that are

to be provided to the public. In reaching this conclusion, I take into account May Prosser-Strong's testimony that "means and methods" are simply not commonly thought of as part of service to the public.

The activity of covert taping at issue here is essentially an internal phenomenon of the Department. It had no direct or visible bearing on service to the public. Therefore, I do not consider the activity within intendment of either NRS 288.150 sections 3. © (3) or (4). However, this belief does not constitute a basis to deem the grievance as meritorious. To deal with that critical point, it is necessary to look at pertinent language of the CBA as previously between these parties.

Article 2 – Preamble is first to be evaluated. The two paragraphs of this Article are typically generalized in nature. Paragraph 2.1 is merely a statement of respective responsibilities, while paragraph 2.2 is a statement of hopeful intent and purpose that the parties engage is "orderly and peaceful" behavior in their mutual approach to the setting of the oft-phrased "wages, hours, and other terms and conditions of employment . . . ." I applaud these objectives, but at the same time observe this is why collective bargaining agreement preambles became known as "sweetness and light" clauses; that is soothing and conciliatory wording to launch the real working portions of such a document. Directing these few observations to this case, I note therefore that the preamble simply contains no substantive or enforceable language and for this reason cannot be a proper basis upon which to decide DiMarzo's grievance.

Article 5 – Non-Discrimination creates standard assurances against reprisal for covered employees choosing membership or non-membership in WCSPOA for the course of their employment. An even heightened protection is implicit for an individual holding the Association's highest office, as was the case with DiMarzo going into the February 7th scenario. However the record is completely devoid of any evidence that Harris, Evans, or any other agent of the District entertained, effectuated, of even harbored any retaliatory intentions against DiMarzo because of being WCSPOA President at the time. In addition the District notes that the allegation of Article 5 violation was dropped by the Association during course of the hearing, referencing transcript page 161 on the point. I can agree that the discrimination issue has been effectively withdrawn by the Association, but note that this is most clearly shown by remarks on transcript pages 165 and 174.

A final reference in the detailed attachment of the originating grievance is to Article 23 – Terms of Agreement. This reference received little attention in the course of grievance processing, and I take it only for reference purposes to the authority of NRS 288.650 for continuing applicability of the contract beyond, and based on, the parties' modifying MOU of August 2000.

This leaves the subject of "past practice" and claimed unilateral action with regard to Department policies as intertwined notions that bear directly on the grievance. A great deal of testimony from Association witnesses covered police practices in general and covert taping in particular, as found currently or before in various surrounding law enforcement agencies.

While there could be instances in which such testimony would be germane in an arbitration case, I do not believe that is the situation here. The District is not bound to defend on what is done elsewhere, but definitely only so as to what happened within the confines of its own school police Department with the CBA of these parties for context.

Thus the question is just what was the practice of the past at the District? In the first place potential for covert recording was skewed by the fact that not all police officers chose to carry a tape recorder with covert capacity. This means the practice was random at best, and intrinsically not applicable to some small, unknown portion of the force. Truly, however, there was one celebrated instance with the terminated former chief. But this instance of covert recording occurred in the course of "special" and unprecedented circumstances; not a solid basis from which a practice can be established.

Certainly Officer Miller testified directly that he had performed covert taping of both District staff and his own superiors. He added that on such occasions he advised then-chief Lyman of his actions. This was not a matter of seeking permission; rather only informational. At least one such occasion involved a criminal matter, and thus permitted under any view of NRS 393.400. DiMarzo also testified to several such instances of his engaging in overt taping while at a school site. Buttressing these offerings is he testimony of May Prosser-Strong that in the past even sergeants of the Department had told her they engaged in surreptitious taping.

The upshot of all testimony on the point is insufficient to establish that a past practice, running throughout the nearly 30 police officers of the Department, was established. Instead of being "unequivocal", it was vague and random. Instead of being "clearly enunciated and acted upon" it was never announced or publicized by a Department head, and certainly not Evans as to whom she had no knowledge at all of the activity. And it was neither "fixed" or "established" over a reasonable period of time; instead only occasional and border-line clandestine in its use.

The question is whether or not an impermissible unilateral change in terms and conditions of employment occurred as to validate the grievance. It is true that Dancer's notification of Policy Manual revisions reached Association offices prior to the February 7th scenario. May Prosser-Strong replied to this with a plainly worded answer of seeking discussion and cautioning that no changes should be made. Separate and apart from the question of whether Harris would even

reasonably have learned of policy revisions in the short time line involved, it is not the case that language of the Policy Manual's singular section 06.10.8 was even a mandatory subject of negotiation.

The CBA itself is barren of any language or hint that Department policies are necessarily negotiable, and WCSPOA has never formally presented an explicit demand for such negotiations. I therefore do not find that the District committed a unilateral change in contravention of bargaining obligations, and thus so would provide any measure of support for DiMarzo's grievance.

A Summary Statement of principal reasons for this denial, as discussed sequentially above, is as follows:

1. Although the Association's contentions here are earnestly mounted, the collective bargaining agreement itself is so barren of supportive language that it does not warrant a result sought by the Association..

2. Past or comparable practices (including those that are not unilateral changes within meaning of the parties own CBA) are insufficient to require that the District, and its supervisors here, behave only in the manner sought by the Association.

3. Nevada statutes, read together, do not provide a plain enough expression of such legislative intent as would add vital support to the Association's grievance.

A W A R D

The grievance of Deke DiMarzo is denied in its entirety.

October 13, 2003

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David G. Heilbrun